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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Protest of Bid Rejection as Nonresponsive]

FILE:

B-200267

DATE: May 1, 1981

MATTER OF:

Sphere Management, Inc.

DIGEST:

06626

Failure of individual surety to sign bid bond is waivable when accompanying affidavit of individual surety is properly executed and clearly evidences surety's intent to be bound by bond.

Sphere Management, Inc. (Sphere), protests the rejection of its bid under invitation for bids (IFB) No. DAKF70-80-B-0061, issued by the Department of the Army, Fort Richardson, Alaska (Army), for security guard services at Fort Greely, Alaska. Stanley Smith Security, Inc. (Smith), received the award after Sphere's rejection.

The contracting officer rejected Sphere's bid as nonresponsive because it did not include a properly executed bid bond, standard form (SF) 24, in that only one of the two required individual sureties offered in support of the bond signed the bond. While not denying the signature deficiency, Sphere contends that the missing signature was a waivable oversight since the bond was accompanied by an Affidavit of Individual Surety clearly evincing the intent of the surety who failed to sign the bond to be bound by the bond.

The Army correctly points out that, under the IFB provisions and Defense Acquisition Regulation (DAR) §§ 10-102.5, 10-201.2, and 2-404.2(h) (1976 ed.), a bid bond signed by only one rather than two individual sureties would require the bid to be rejected as nonresponsive. However, for the reasons set forth below, we do not believe the bid was nonresponsive.

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On the bond, in the space labeled "INDIVIDUAL SURETIES," appeared the typewritten name of Sphere's "second" individual surety, without a signature. Instruction 4(B) of the bond required that where individual sureties execute the bond, a completed affidavit for each individual surety shall accompany the bond. The first paragraph of the affidavit provides:

"I, the undersigned, being duly sworn, depose and say that I am one of the sureties to the attached bond; * * * This affidavit is made to induce the United States of America to accept me as surety on the attached bond."

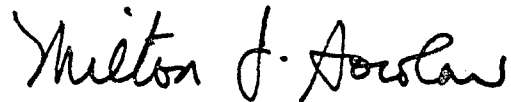
Before a public notary, Sphere's "second" surety fully completed and executed the affidavit, which specifically referred to the IFB.

Since the bid bond required the submission of the affidavit, both of these documents may be reviewed to ascertain whether the surety intended to be bound by the bond. In our view, Sphere's "second" surety evidenced an intent to be bound by the bond because of the notarized execution of the accompanying affidavit. Therefore, the bid contained a proper bid bond and should not have been rejected as nonresponsive.

DAR and our decisions support the above principle that a party's intent may be ascertained from all the submitted documents to excuse the lack of a required signature. For example, where a bid is unsigned but is accompanied by other documents manifesting the bidder's intent to be bound, the failure to sign the bid, usually calling for bid rejection, is a waivable defect. See Thomas, Inc., B-194700, May 11, 1979, 79-1 CPD 339, and DAR § 2-405(iii)(B). See, also, B-177407, February 26, 1973. Our decision in Cassidy Cleaning, Inc., B-191279, April 27, 1978, 78-1 CPD 331, is distinguishable because, although the bid contained three affidavits of individual sureties, the bidder submitted a completely blank bid bond form, which made the bid nonresponsive.

Because of our conclusion, we ordinarily would recommend that the Army terminate for convenience the Smith contract and award to Sphere the remainder of the work. However, the Army understandably did not investigate Sphere's responsibility after rejecting the bid as nonresponsive. Therefore, we recommend that the Army determine Sphere's responsibility taking into account: (1) Sphere's ability to comply with the license requirement of the specifications raised by Smith prior to its award and (2) the failure of either of Sphere's individual sureties to demonstrate the requisite net worth in support of the bond. If Sphere is found responsible, or nonresponsive, but the Small Business Administration issues a certificate of competency, the Smith contract should be terminated and the award made to Sphere.

Protest sustained.



Acting Comptroller General
of the United States